

**FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463**

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 416
DATE SUA SPONTE FILED: November 24, 2003
DATE ACTIVATED: December 15, 2003

EXPIRATION OF SOL: October 16, 2005 –
December 19, 2007

RESPONDENTS:

Westar Energy, Inc.

Douglass Lawrence
Carl Koupal
Governmental Strategies, Inc.
Richard Bornemann

RELEVANT STATUTES:

2 U.S.C. § 441b
2 U.S.C. § 441(b)(a)
11 C.F.R. § 110.6
11 C.F.R. § 114.2(d)
11 C.F.R. § 114.2(f)
11 C.F.R. § 114.3(c)(2)(iii)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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1 **I. INTRODUCTION**

2 This matter originated with a sua sponte submission filed by Westar Energy, Inc.
3 (“Westar”), an electric utility based in Topeka, Kansas, regarding the activities of several former
4 officers and an outside lobbyist. The activities involved top Westar executives soliciting
5 earmarked contributions from other executives, collecting the contribution checks, and sending
6 them to targeted federal candidates who were in a position to assist Westar in obtaining a highly
7 lucrative exemption from certain federal regulatory requirements. Most of the activities described
8 in the sua sponte submission occurred during the 2002 election cycle and involved thirteen Westar
9 executives who contributed \$32,700 in response to solicitations; however, there is information
10 indicating that similar activities occurred before 2002.

11 Westar does not acknowledge that its bundling of earmarked contributions constituted
12 prohibited corporate facilitation and conduit activity in violation of the Federal Election Campaign
13 Act of 1971, as amended (“FECA” or “the Act”), and the Commission’s implementing
14 regulations.¹ Instead, Westar maintains that if the activities described in the submission violated
15 the Act, the violations were de minimus and resulted from one of its officers and its outside
16 lobbyist acting in a volunteer capacity and not in a corporate enterprise; therefore, the Commission
17 should take no action. Westar also emphasizes the “aggressive actions” it has taken to ensure
18 future compliance with the Act.

¹ The facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107-155, 116 Stat 81 (2002). All citations to FECA, codified at 2 U.S.C. §§ 431 *et seq*, the Commission’s regulations, and all statements of applicable law herein, refer to FECA and its implementing regulations as they existed prior to the effective date of BCRA.

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1 As more fully set forth below, it appears that Westar, certain of its officers, and its outside
2 lobbyist engaged in activities that constitute corporate facilitation and prohibited conduit activity in
3 violation of 2 U.S.C. § 441b(a) and 11 C.F. R. §§ 110.6(b)(2)(ii) and 114.2(f).

4 **II. FACTUAL SUMMARY**

5 **A. Background**

6 Westar Energy, Inc., formerly known as Western Resources, Inc., is a Kansas public
7 corporation headquartered in Topeka.² It is the largest electricity provider in Kansas, serving more
8 than 600,000 customers and employing more than 2,000 people.

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10
11 According to information contained in the sua sponte submission, Westar has been
12 politically active since the late 1980s, mostly as an advocate for public utility deregulation. The
13 company's political activities have included direct corporate contributions to state and local
14 candidates (permitted under state law), contributions from Westar's separate segregated fund, most
15 recently known as the Western Resources Political Action Committee ("Westar PAC"), to federal
16 candidates, and earmarked contributions from Westar executives to federal candidates, primarily
17 within the Kansas congressional delegation. Notably, after
18 1998, employee contributions to the Westar PAC declined significantly and individual earmarked
19 contributions from Westar executives increased in their place.³

² Two utility companies dating to the early 1900s merged to form Western Resources in 1992. In 2002, Western Resources, Inc, changed its name to "Westar Energy," which is referred to throughout this Report as "Westar."

³

On March 29, 2001, the PAC notified the Commission that it was terminating effective December 31, 2000. As part of its recent corporate reform efforts, Westar has resurrected a PAC, the Westar Energy Employees Political Action Committee, which filed its Statement of Organization with the Commission on October 3, 2003.

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1 **B. 2002 Contribution Activity**

2 As recounted in Westar's voluntary submission to the Commission, in late 2001, Congress
3 began to consider a major energy deregulation bill that had significant consequences for Westar.
4 See Sua Sponte Submission ("Submission"), at 9. The press reported that an early version of the
5 Energy Bill, proposed by Rep. Joe Barton, would have exempted any subsidiary or affiliate of a
6 utility holding company from Securities and Exchange Commission oversight under the
7 Investment Company Act of 1940 ("ICA").⁴ Along with a widely accepted effort to repeal the
8 Public Utility Holding Company Act of 1935, the ICA exemption provision would have allowed
9 utility companies to create and own investment companies that would not be subject to any federal
10 regulatory oversight.⁵ Westar acknowledged in its Submission that it was extremely interested in
11 getting this legislation enacted.⁶

12 Because of strong opposition from several congressional members and the SEC, neither the
13 Senate nor House versions of the Bill contained the industry-wide exemption.⁷ Consequently,
14 according to the Submission, Westar and its outside lobbyist, Richard Bornemann of Virginia-
15 based Governmental Strategies, Inc., devised a political strategy to try to preserve the exemption in

⁴ See Michael Schroeder, *House Power Bill Allows for Host of Exemptions*, Wall. St. J., Feb. 15, 2002, at A4.

⁵ *Id*

⁶ In the early 1990s, at a time of public utility deregulation, Westar began to diversify the company business by increasing its electric utility holdings as well as acquiring non-regulated businesses unrelated to traditional energy services. Submission, at 2-3.

⁷ See, e.g., *Testimony Concerning H R. 3406 and Repeal of the Public Utility Holding Company Act of 1935 and Testimony Concerning The Enron Bankruptcy, the Functioning of Energy Markets and Repeal of the Public Utility Holding Company Act of 1935 Hearings Before the House Comm. on Energy and Commerce, Subcomm on Energy and Air Quality* (Dec. 13, 2001, and Feb 13, 2002) (statements of Isaac C Hunt, Jr., Commissioner, U.S Securities and Exchange Commission).

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1 the legislation. Submission, at 9. This strategy included the making of contributions to the
2 political committees of key legislators behind the Bill. *See id.*, Attachment 11 (Bornemann
3 memo).

4 Toward this end, on April 23, 2002, Bornemann submitted a memorandum to Douglass
5 Lawrence, Westar's then-Vice President of Government Affairs, outlining a plan to have Westar
6 make contributions to Rep. W.J. "Billy" Tauzin, Rep. Joe Barton, Rep. Michael G. Oxley, Rep.
7 Richard Burr, Sen. Richard C. Shelby, House Majority Leader Tom DeLay, and to these
8 legislators' designees. *See id.* The memo recommended that Westar executives or Westar PAC
9 give \$31,500 to these specific candidates and that Westar make a \$25,000 contribution in
10 nonfederal funds to Rep. DeLay's Texans for a Republican Majority PAC. *Id.* The stated purpose
11 of the proposed contributions was "to develop a significant and positive profile for the Company's
12 federal presence." *Id.*

13 The Submission notes that shortly thereafter, Lawrence devised a payment
14 schedule for thirteen Westar executives at the Vice President level or above to make individual
15 contributions to the targeted legislators. *See* Submission, at 9-10, and Attachment 12. Based on
16 their salaries, Lawrence asked executives to give specific amounts to specific candidates. *Id.*
17 Lawrence made these solicitations by internal office memoranda and email. *Id.* In one such inter-
18 office memorandum dated May 17, 2002, and entitled "Suggested Campaign Contributions,"
19 Lawrence tied the solicitation to the pending Energy Bill and its impact on Westar's financial
20 restructuring plan. *See* Submission, Attachment 12. The memorandum had three attachments: the

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1 first attachment showed the total amount of Westar contributions as outlined by Bornemann and
2 each executive's pro rata "suggested" share; the second attachment outlined the "first round" of
3 contributions and listed the recipient committees and the amount each executive should contribute;
4 the third attachment spelled out to whom each executive should write a check (or checks) and the
5 specific amount(s). *See id.* Lawrence asked the executives to "Please forward your personal check
6 as soon as possible to my attention." *Id.* Lawrence sent similar solicitations in July and late-
7 October/early November 2002. *See Submission*, at 10.

8 In response to these solicitations, each executive made the requested contributions, though
9 some gave more or less than the requested amount. *See id.*; *see also Submission*, Attachment 15.
10 Chart 1 below sets forth the total amounts requested from and contributed by the executives who
11 participated in the plan. Chart 2 below sets forth the committees that received contributions
12 pursuant to the contribution plan.

13 **CHART 1**
14 **Westar Executives' Contribution Schedule**
15 **May 31, 2002 – Dec. 19, 2002**

16			TOTAL	TOTAL
17			AMOUNT	AMOUNT
18			REQUESTED	CONTRIBUTED
19	NAME	TITLE		
20	David Wittig	President and CEO	\$9,450	\$10,000
21	Doug Lake	Executive VP Corporate Strategy	\$6,300	\$ 6,300
22	Doug Sterbenz	Sr. VP Generation & Marketing	\$3,150	\$ 4,200
23	Paul Geist	Sr. VP and CFO	\$2,677.50	\$ 425
24	Richard Dixon	Sr. VP Customer Operations	\$1,890	\$ 950
25	Anita "Jo" Hunt	VP Risk Management	\$1,417.50	\$ 1,700
26	Douglass Lawrence	VP Government Affairs	\$ 945	\$ 3,300
27	Leroy Wages	VP, Controller & International Generation	\$ 945	\$ 800
28	Bruce Akin	VP Business Services	\$ 945	\$ 800
29	Larry Irick	VP, General Counsel & Corporate Secretary	\$ 945	\$ 850
30	Peggy Loyd	VP Financial Services	\$ 945	\$ 850
31	Caroline Williams	VP Customer Care	\$ 945	\$ 1,600
32	Kelly Harrison	VP Regulatory	\$ 945	\$ 925
33	Total:		\$31,500	\$32,700

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CHART 2
Recipients of Westar Contributions
May 31, 2002 – Dec. 19, 2002

COMMITTEE	TOTAL
The Congressman Joe Barton Committee	\$2,000
Bayou Leader PAC (Tauzin)	\$2,800
Shelley Moore Capito for Congress	\$1,000
Tom DeLay Congressional Committee	\$2,400 ⁹
Graves for Congress	\$1,000
Hayes for Congress	\$1,500
Latham for Congress	\$1,000
Leadership PAC 2004 (Oxley)	\$1,000
Next Century Fund (Burr)	\$1,000
Northup for Congress	\$ 850
NRCCC	\$1,150
Oxley for Congress	\$1,000
Volunteers for Shimkus	\$1,000
Simmons for Congress	\$1,000
Team Sununu	\$2,000
Texas Freedom Fund (Barton)	\$2,000
Tom Young For Congress	<u>\$10,000</u>
Total:	\$32,700

According to the Submission, after the executives submitted the contribution checks, Lawrence collected the contributions and sent them as a bundle to the recipient committees.¹⁰ In at least some cases, Lawrence forwarded the contribution checks to Bornemann to be hand-delivered to the candidates at fundraising events.¹¹ See Submission, at 10. Contributions were delivered to the targeted legislators at varying times through late 2002.

⁹ In addition, in May 2002, Westar gave a \$25,000 contribution to Rep. DeLay's Texans for a Republican Majority.

¹⁰ As of May 2, 2004, Westar reported finding Federal Express receipts documenting 5 shipments of Westar employees' checks to candidate committees. See Submission, at 12; Supplemental Submission, May 2, 2004.

¹¹ Westar's submission and a Special Report prepared for Westar during an internal investigation, discussed *infra*, p. 8, conflict on this point. The Special Report states that Westar sometimes sent checks directly to the recipient committees, while the submission and accompanying affidavits from Lawrence and his assistant state that the checks always were sent to Bornemann.

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1 **C. The Special Report**

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Westar hired the law firm of Debevoise
& Plimpton (“Special Committee”) to investigate independently

On April 29, 2003, the Special Committee presented the Westar Board of Directors with
the results of its investigation in an almost 400-page report (“Special Report”).¹⁴

¹⁴ See http://media.corporate-ir.net/media_files/nys/wr/reports/custom_page/WestarEnergy.pdf.

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During the internal investigation into Westar's corporate practices, the Special Committee discovered potential election law violations made by Westar. The Special Committee devoted a relatively short section (eight pages) of the Special Report to these potential violations. See Submission, Attachment 3. The Special Report describes organized efforts by Lawrence and Lawrence's predecessor, Carl Koupal, between 2000 and 2002 to make contributions to state and federal candidates who were in positions to benefit Westar. *Id.*, at 341-344. Notably, the Special Report provides greater detail about Westar's pre-2002 contribution activity (when Carl Koupal led the governmental affairs office) than does Westar's sua sponte submission.

According to the Special Report, "management had a practice of soliciting individual officers for recommended political contributions earmarked for particular candidates." See *id.*, at 342. The Special Committee interviewed many of the executives who were asked to make contributions and reviewed relevant documents, including email communications. According to the Special Committee, "some officers felt pressured to contribute,

On the other hand, the Special Report noted that "employees indicated in interviews that they could refuse to make contributions to a particular candidate" and "none of the officers we

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1 spoke to reported having been told that his or her job would be in jeopardy or that there would be
2 any other form of retribution if he or she did not contribute.” *Id.* In conclusion, the Special
3 Committee recommended that Westar hire election counsel to further analyze the events. *Id.*, at
4 348-349.

5 In May 2003, Westar posted the Special Report and the accompanying 246 exhibits on
6 Westar’s website. Soon thereafter, news stories and editorials began appearing in the media about
7 the Special Report’s revelations; most of the articles focused on the 2002 political contribution
8 activity that seemed directly tied to the Congressional assistance Westar reportedly received during
9 negotiations on the Energy Bill.¹⁶ Consequently, many of the legislators who received Westar
10 contributions faced allegations by public interest groups and other legislators that they were bribed
11 for their votes and should be investigated for ethics violations.¹⁷ Public attention also fell upon
12 Westar’s lobbyist, Richard Bornemann, for devising the contribution plan.¹⁸ Some legislators
13 disgorged their Westar contributions by donating an equivalent dollar amount to charity.¹⁹

¹⁶ See, e.g., Thomas B. Edsall and Juliet Eilperin, *Democrats, Group Seek Probe of GOP, Westar*, The Wash. Post, June 7, 2003, at A2; Thomas B. Edsall and Juliet Eilperin, *Agency Questions Westar Provision, Executives Called Real Beneficiaries*, The Wash. Post, June 14, 2003, at A4; *Westar Drops Former V.P.-Turned-Lobbyist, Finds Itself in Growing Public Political Scandal*, Electric Utility Week, June 16, 2003, at 1.

¹⁷ See, e.g., Charles Babington and Dan Morgan, *Ethics Truce Frays in House*, The Wash. Post, March 17, 2004, at A1; Thomas B. Edsall, *Westar a Saga of Money’s Role on Hill, Some Demand Probe as GOP Lawmakers Say No Legislative Deals Were Made*, The Wash. Post, June 23, 2003, at A5. For example, Public Citizen filed a complaint with the Department of Justice’s Office of Public Integrity and posted the complaint on its website. In a June 2003 document posted on its website, Public Citizen said that it “requests” the FEC to investigate Westar and the legislators’ potential breaches of campaign finance laws. Public Citizen never filed a complaint with the Commission.

¹⁸ See, e.g., Juliet Eilperin, *Westar Lobbyist’s Role Detailed, Firm’s Representative Attended 2 GOP Lawmakers’ Fundraisers*, The Wash. Post, June 10, 2003, at A4; Pete Yost, *Who Solicited Westar Donations – Tauzin and Barton or Utility’s Lobbyist?*, Associated Press, June 10, 2003; Pete Yost, *Tauzin, Barton Raised Money for 7 Republicans Who Later Got Donations from Westar*, Associated Press, June 10, 2003.

¹⁹ See, e.g., Thomas B. Edsall, *Westar a Saga of Money’s Role on Hill, Some Demand Probe as GOP Lawmakers Say No Legislative Deals Were Made*, The Wash. Post, June 23, 2003, at A5. Research of FEC disclosure report databases

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1 **D. Prior Contribution Activities**

2 As disclosed in the Special Report, it appears that that the 2002 contribution plan was not
3 an isolated incident and that Westar had a history of coordinated contribution efforts. *See*
4 Submission, Attachment 3, at 341. The Special Report described one incident in September 2000
5 where Koupal solicited six executives and requested \$15,500 in political contributions
6 through a payment schedule similar to the one created for the 2002 activity. *Id.*, at 342. An email
7 communication from Koupal dated Sept. 20, 2000, outlined a plan to request contribution
8 checks and "deliver them together," indicating an intent that the contributions be sent as a package
9 to the various candidates. *See* Submission, Attachment 10. According to disclosure reports, it
10 appears that this solicitation resulted in \$13,500 in contributions to four federal candidates. Chart
11 3 below sets forth the September 2000 contribution effort, and Chart 4 identifies the targeted
12 legislators and the contributions they received.
13

revealed no refunds to Westar executives. Research also revealed that Rep. Burr's Next Century Fund and Team Sununu appear to have disgorged \$1,000 Westar contributions to charitable organizations, and Rep. Dennis Moore appears to have disgorged \$1,800 out of \$2,750 he received from Westar.

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1 Other than the September 2000 solicitation, neither the Special Report nor the sua sponte
2 submission cites to specific organized efforts to bundle and forward contribution checks in a
3 manner similar to the 2002 solicitations. FEC disclosure reports disclose a few instances of
4 apparent bundled contributions from Westar executives between June 2001 and February 2002,
5 where two or more Westar executives made contributions at or around the same time to the same
6 committee.²¹

7 **III. LEGAL ANALYSIS**

8 **A. Westar, Lawrence and Koupal**

9 Westar acknowledges that the payment schedules for the earmarked
10 contributions made by executives between at least 2000 and 2002 and does not deny the finding
11 contained in the Special Report that Koupal and Lawrence, helped select the
12 candidates to whom contributions should be made.

13
14 Finally, Westar acknowledges that Lawrence and Koupal acted as
15 conduits or intermediaries by collecting earmarked contribution checks from Westar executives
16 and forwarding them as a package to various recipient committees or to Bornemann who then
17 delivered the checks to the recipient committees.

18 Despite the undisputed facts, Westar claims that Lawrence and Koupal were acting in a
19 volunteer capacity and not as part of a corporate enterprise, and, thus, their activities were

²¹ Based on disclosure reports, the following additional seemingly bundled contributions occurred: June 15, 2001, \$1,250 from 5 Westar executives to Pat Roberts for Senate; Jan. 9, 2002, \$1,000 from 2 executives to Moran for Kansas; Jan 10, 2002, \$1,200 from 2 executives to Jim Ryun for Congress; Feb 5, 2002, \$1,200 from 2 executives to Tiahrt for Congress; and Feb. 23, 2002, \$1,200 from 2 executives to Sam Brownback for U.S. Senate

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1 permissible or at the most de minimus violations.²² This claim does not appear to be supported by
2 the facts. A corporation can only act through its directors, officers, and agents. *United States v.*
3 *Wallach*, 935 F.2d 445, 462 (2d Cir. 1991); 1 William Meade Fletcher et al., *Fletcher Cyclopedica*
4 *of the Law of Private Corporations* § 30 (1999 and Supp. 2003). Moreover, corporations may be
5 held liable, both civilly and criminally, for the acts of an employee within the scope of the
6 employment and that benefit the corporate employer. *See, e.g., Liquid Air Corp. v. Rogers*, 834
7 F.2d 1297, 1306 (7th Cir.1987); 18B Am. Jur. 2d *Corporations* §§ 2131, 2136 (2003). The
8 information available indicates that Lawrence and Koupal solicited, collected and bundled the
9 earmarked contributions from Westar executives using corporate resources and at the request and
10 direction of Westar . There is no
11 indication that Lawrence or Koupal devised the contribution plans on their own or that, absent their
12 employment, they would have solicited contributions from Westar executives.

13
14 Thus, it appears that Lawrence and Koupal acted in their corporate
15 capacities for the benefit of Westar.

16 Corporations are prohibited from acting as conduits for contributions earmarked to
17 candidates or their authorized committees. *See* 11 C.F.R. § 110.6(b)(2)(ii). In addition, the
18 prohibition against corporate contributions embodied in 2 U.S.C. § 441b(a) includes the facilitation
19 of earmarked contributions by a corporation and its officers, directors, or agents. *See* 11 C.F.R. §
20 114.2(f)(1). Examples of facilitation include directing subordinates to plan, organize, or carry out

²² Under Commission regulations, corporate employees may make occasional, isolated or incidental use of corporate facilities for their own individual volunteer activities in connection with a federal election provided the corporation is reimbursed for certain costs incurred by such activity. 11 C.F.R. § 114.9(a).

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1 a fundraising project as part of their work responsibilities, using corporate resources and providing
2 materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes or
3 other similar items, or using coercion to urge individuals to make contributions. 11 C.F.R. §§
4 114.2(f)(2)(ii) and 114.2(f)(2)(iv). By collecting and forwarding earmarked contributions to
5 candidates, Westar appears to have violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii)
6 and 114.2(f) by acting as a conduit and facilitating the making of contributions.²³

7 Accordingly, this Office recommends that the Commission find reason to believe that
8 Westar Energy, Inc., acting through its officers and agents, violated 2 U.S.C. § 441b(a) and 11
9 C.F.R. § 114.2(f) by facilitating the making of contributions and violated 11 C.F.R. §
10 110.6(b)(2)(ii) by acting as a conduit for earmarked contributions to candidates. This Office also
11 recommends that the Commission find reason to believe Lawrence and Koupal
12 violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f) by participating in and/or
13 consenting to the corporate facilitation and improper conduit activity committed by Westar.²⁴

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²³ Based on interviews with Westar executives, the Special Report notes, "at least one employee complained ... that employees felt coerced and intimidated into making requested contributions" See Submission, Attachment 3 at 347. However, the Special Report states and Westar maintains that there is no evidence of any overt coercion. In fact, some employees did not contribute as much as they were asked to, and no detrimental action appears to have resulted.

In any case, Westar also argues that Lawrence, who had the most contact with the solicited executives, was a peer and not a superior. In fact, no employee Lawrence supervised in the Government Affairs office was asked to contribute. Regardless of whether Westar used coercion to urge employees to make contributions, it appears that Westar committed corporate facilitation by collecting and forwarding the checks to committees.

²⁴ There is no publicly available information indicating that Westar reimbursed the executives for their contributions, and, to the contrary, Lawrence attests in an affidavit that he never received reimbursement from Westar See Submission, Attachment 1. Accordingly, and based on other available information at this time, this Office does not believe that the facts support a "knowing and willful" finding or a Section 441f violation.

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1 **B. GSI and Bornemann**

2 Westar created an agency relationship with GSI and Bornemann when they contracted for
3 lobbying and governmental affairs consulting services. *See* Restatement (Second) Agency § 15
4 (agency relationship exists if there has been a manifestation by the principal to the agent that the
5 agent may act on his account, and consent by the agent to so act). As Westar's agents, GSI and
6 Bornemann were prohibited from engaging in corporate facilitation of individual earmarked
7 contributions on behalf of Westar. *See* 11 C.F.R. § 114.2(f)(1)(the prohibition against corporate
8 facilitation extends to agents of a corporation). Nevertheless, in addition to devising the plan for
9 the 2002 contributions, Bornemann received the individual contributions directly from Westar and
10 delivered them to the recipient committees.

11 There is information indicating that Bornemann also knew the contributions had been
12 collected and bundled by Westar. Indeed, according to affidavits attached to the Submission,
13 Douglass Lawrence's administrative assistant mailed the bundled contributions in Federal Express
14 envelopes directly from Westar to Bornemann. Lawrence Aff. ¶ 8 and Lewis Aff. ¶ 4. As
15 recipients of mailings from the corporation, rather than from the individual donors, it appears that
16 Bornemann knew that Westar facilitated the transmittal or delivery of the contributions. By
17 delivering the contributions to the recipient committees, with the knowledge that the contributions
18 had been collected, bundled and forwarded by the corporation, Bornemann and his firm played a
19 substantial role in the prohibited corporate facilitation as the agents of Westar.

20 Therefore, this Office recommends that the Commission find reason to believe that
21 Government Strategies, Inc., and Richard Bornemann violated 11 C.F.R. § 114.2(f)(1) by
22 facilitating bundled contributions to political committees on behalf of Westar.

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1 **C. Recipient Committees**

2 Section 441b(a) also makes it unlawful for any candidate, political committee, or other
3 person to knowingly accept or receive a corporate contribution.²⁵ The circumstances surrounding
4 the 2002 facilitation and conduit activity described above, particularly information that certain
5 candidates may have personally received the bundled contributions at fundraising events, suggest
6 that many recipient committees may have knowingly received prohibited contributions. In
7 addition, the facts surrounding the contributions resulting from the September 2000 solicitation
8 suggest that the committees may have known they were receiving prohibited contributions,
9 primarily because Koupal collected, bundled and forwarded the earmarked contributions to the
10 targeted political committees.²⁶ Additional information would be needed, however, to determine
11 which candidates or committees had the requisite knowledge, if any. Given the relatively small
12 amount potentially in violation (\$52,050 divided among 23 committees), a formal investigation
13 may not be an appropriate use of the Commission's limited resources. Accordingly, this Office
14 recommends that the Commission take no action at this time against the recipient committees but
15 send a letter notifying them of the prohibited contributions and requiring disgorgement (if they
16 have not already done so).²⁷

²⁵ The committee treasurer must use best efforts to determine the legality of a questionable contribution. 11 C.F.R. § 103.3(b)(1).

²⁶ Five other instances of apparent bundled contributions also suggest that the committees may have known they were receiving prohibited contributions. See n. 24, *supra*.

²⁷ The recipient committees that have not disgorged their Westar contributions consist of The Congressman Joe Barton Committee (Judy Markley, treasurer); Bayou Leader PAC (Tauzin) (Emily Young Shaw, treasurer); Sam Brownback for U.S. Senate (Steven Poage, treasurer); Shelley Moore Capito for Congress (Reed Spangler, treasurer); Tom DeLay Congressional Committee (Dana Benoit, treasurer); Graves for Congress (Terry J. Brady, treasurer); Hayes for Congress (John Haynes, treasurer); Latham for Congress (Robert W. Brinton, treasurer); Leadership PAC 2004 (Oxley) (Pamela Sederholm, treasurer); Dennis Moore for Congress (Constance Shidler, treasurer); Moran for Kansas (Thomas V. Dechant, treasurer); Northup for Congress (James Meagher, treasurer), NRCCC (Christopher J. Ward, treasurer); Oxley for Congress (Jody Beall O'Brien, treasurer); Pat Roberts for Senate (Robert A. Parrish, treasurer);

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1 **IV. CONCILIATION AND CIVIL PENALTY**

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Jim Ryn for Congress (Stephen R. Iliff, treasurer); Volunteers for Shumkus (Erik J. Dillman, treasurer), Simmons for Congress (Anne Simeone, treasurer); Texas Freedom Fund (Barton) (Jeff MacKinnon, treasurer); Tiaht for Congress (George C. Bruce, treasurer); Tom Young For Congress (Mark E. Hieronymus, treasurer).

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V. RECOMMENDATIONS

1. Find reason to believe that Westar Energy, Inc., Douglass Lawrence and Carl Koupal violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f);
2. Find reason to believe that Governmental Strategies, Inc., and Richard Bornemann violated 11 C.F.R. § 114.2(f);
3. Enter into pre-probable cause conciliation with Westar Energy, Inc., Douglass Lawrence and Carl Koupal prior to a finding of probable cause to believe;
4. Enter into pre-probable cause conciliation with Governmental Strategies, Inc., and Richard Bornemann, prior to a finding of probable cause to believe;
5. Approve the attached proposed Conciliation Agreements;
6. Approve the attached Factual and Legal Analyses; and
7. Approve the appropriate letters, including letters to recipient committees requiring disgorgement.

Lawrence H. Norton
General Counsel

Date: 9/24/04

BY: 
Rhonda J. Vosdigh
Associate General Counsel


Ann Marie Terzaken
Assistant General Counsel


Elena Paoli
Attorney

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Attachments:

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- 3 1. Proposed Conciliation Agreement for Westar Energy, Inc.
- 4 2. Proposed Factual and Legal Analysis for Westar Energy, Inc.
- 5 3.
- 6 4.
- 7 5.
- 8 6.
- 9 7. Proposed Conciliation Agreement for Douglass Lawrence
- 10 8. Proposed Factual and Legal Analysis for Douglass Lawrence
- 11 9. Proposed Conciliation Agreement for Carl Koupal
- 12 10. Proposed Factual and Legal Analysis for Carl Koupal
- 13 11. Proposed Conciliation Agreement for Governmental Strategies, Inc., and Richard
- 14 Bornemann
- 15 12. Proposed Factual and Legal Analysis for Governmental Strategies, Inc., and Richard
- 16 Bornemann

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